95-4231

No.

Supreme Court, U.S.
FILED
SEP 6 1995
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

LILLIAN BROWN JOHNSON

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

LILLIAN BROWN JOHNSON
P. O. Box 19-1191
Los Angeles, California 90019

1-310-826-2180

Petitioner Attorney *Pro Se*

48pp

QUESTIONS PRESENTED

1. Is a State Supreme Court which appoints employees to a private party, and by finding against the other party obtains monies for their appointees' employer to reimburse their appointees' salaries and benefits and to fund other programs administered by their appointees, disqualified to sit on cases involving that party?

2. Is the administrative decision-making by one who obtains monies to recoup his salary and benefits and those of his co-employee prosecutors and investigators for his private employer and other funds for his employer's private projects from each accused he finds guilty unconstitutional for lack of a fair and impartial adjudicator, especially when the judge is selected, hired, and employed by the prosecuting party?

3. Is the prosecution by an employee of a privately financed party who desires to recoup his and his co-employee judges, prosecutors, investigators, and staff's salaries and benefits and obtain funds for his

employer's non-disciplinary projects from an accused a bad faith prosecution which denies due process of law?

4. Is the State Bar Court of the State Bar of California unconstitutional as a denial to registered voters of the equal protection of State Law which provides courts are created by the registered voters by constitutional amendment, the Governor fills interim vacancies in judgeships to Courts, state court judges are elected by the registered voters, and the State Bar is ordered to be a public corporation?

5. Is the publication State-wide in the press of inflammatory, prejudicial comments and a suspension recommendation of three employees of a State Bar, including a non-lawyer, prior to access to the judicial adjudication a denial of due process as prejudicing judicial proceedings?

6. Is a state statute making an act of moral turpitude a sanctionable offense unconstitutional for overbreadth?

7. Is a state statute making an act of moral turpitude a sanctionable offense unconstitutional for vagueness as

applied to a claim a written loan between an attorney and her sister-in-law of thirty eight years for $19,860 with ten percent interest, interest only payments for five years, and principal due in the fifth year is an act of moral turpitude?

8. Is a rule of professional conduct concerning business transactions between attorney and client which provides a client must be "given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transaction" unconstitutional for overbreadth and vagueness as applied to a decision's claim this rule means that the attorney "was obligated to go beyond informing Ms. Brown that she had a right to consult another attorney and was required to advise her to do so?"

9. Is a rule of professional conduct concerning business transactions between attorney and client which provides the terms must be transmitted in writing to the client in "manner and terms which should have been reasonably understood by the client" unconstitutional for overbreadth and vagueness as applied to a decision's claim this means

an attorney is "obligated to insure that the terms and conditions of the loan were fully known and understood" by the client?

10. Is a rule of professional conduct concerning business transactions between attorney and client which provides it must be "fair and reasonable to the client" unconstitutional for vagueness and overbreadth as applied to a claim that a $19,860.00 loan between an attorney and her sister-in-law of thirty eight years which is set forth in a promissory note and loan document with ten percent interest, interest payments for five years, and principal due in the fifth year is not fair and reasonable to the client when the client objected and willingly agreed to it?

11. Is a rule of professional conduct sanctioning an attorney for failure to deliver funds to a client when the only evidence presented indicates the attorney paid the client directly unconstitutional for vagueness?

12. Is a rule of professional conduct sanctioning an attorney

for not depositing funds in a trust account, when the funds had become personal by reason of a prior loan to the attorney from her sister-in-law from said funds, unconstitutional for overbreadth, vagueness, and financial interest in the administrative adjudicators and their co-employee prosecutors when their mutual employer confiscates the interest each month for itself from all trust funds ?

13. Is a two year and indefinite suspension based on charges never filed or heard a denial of due process of law?

LIST OF PARTIES

The parties are as follows:

LILLIAN BROWN JOHNSON
P. O. Box 19-1191
Los Angeles, Ca. 90019

1-310-826-2180

Petitioner Attorney *Pro Se*

THE STATE BAR OF CALIFORNIA
555 Franklin Street
San Francisco, Ca. 94102-4498

1-415-561-8200

Respondent

TABLE OF CONTENTS

Page

Questions Presented.....I

List of Parties.....vi

Introduction.....1

I. Orders Below 3

II. Jurisdiction.....4

III. Constitutional and Statutory Provisions Involved.....4

IV. Statement of the Case.....6

V. Reasons for Granting the Writ.....12

A. The Partisan Role of the California Supreme Court for the Prosecuting Party by it Appointing Employees to it and Awarding Money to their Appointees' Employer by Denying Hearing to Each Accused Poses Due Process Problems 12

B. Administrative Adjudicators Selected, Hired, and Employed by a Party Which is The Exclusive Financial Beneficiary of Findings Against Accuseds Poses Due Process Problems 13

C. Privately Financed Prosecutors who Obtain Funds for Their Privately Financed Employer by Prosecuting Accuseds Pose Due Process Problems 15

D. The Admitted Unconstitutionality of the State Bar's Court for Depriving the Petitioner of Her Right to Vote Compels Voiding of the Judgment Based on Proceedings Conducted Therein 18

E. The Moral Turpitude Ethics Statute Sweeps Unnecessarily Broadly and Has No Limiting Construction Posing Overbreadth and Vagueness Due Process Problems 19

F. The Publication by the Prosecuting Party of Its Recommendations as a Court Decision Prior to Court Access and Finality of Its Recommendations Poses Due Process Problems of Fraud and Prejudicial and Inflammatory Pre-Judgment 22

G. Is not a Business Transaction Rule which requires the Transaction be Fair and Reasonable to the Client, That the terms in Writing Should Reasonably be Understood by the Client, and that a Client be Advised he May Seek the Advice of an Independent lawyer, Unconstitutional as applied to a claim the State Bar Would have made a Different Loan, that the Attorney had to make sure each Term was Fully Known and Understood, the Client was in Poor Health and Unsophisticated, and that the Attorney had to Tell Client to Go to an Independent Attorney? 27

H. The fact The Loan was Made before the Settlement Received and the Attorney Paid the Client's Funds Out of her own Funds before Receipt indicates No Trust Account Violation Occurred and the Rule is Unconstitutional for Financial Interest and Overbreadth 30

Conclusion.....34

Table of Authorities

Aetna Life Insurance Company v. La Voie 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988).....12

Berger v. United States 295 U.S. 78, 88, 55 S. Ct. 629, 79 L. ed. 2d. 1314 (1935)].....15.

Big Mama Rag Inc. v. United States 631 F.2d. 1030 (D.C. 1980)..... 29

Gentile v. v. State Bar of Nevada 501 U.S. 1030, 115 L. Ed. 2d. 888, 111 S. Ct. 2720 (1991)..... 20

In re: Ruffalo 390 U.S. 544, 551, 88 S. Ct. 1222, 1226, 20 L. Ed. 2d. 117 (1968)..... 33

In The Matter of Ross, 668 P. 2d. 10989 (1983).....14

Kitsis v. State Bar 23 Cal. 3d. 857, at 865; 153 Cal. Rptr. 836, 592 P.2d. 323 (1979).....20

Kramer v. Price 712 F. 2d. 174, 177 (Fifth Cir. 1983)..... 19

Shaw v. Garrison 467 F. 2d. 113 (Fifth Cir. 1972).....16

Sheppard v. Maxwell 384 U.S. 336, 86 S. Ct. 1507 25

Stanford v. State Bar (1940) 15 Cal. 2d. 721 , 727 [107 P. 2d. 635}..... 20

Ward v. Village of Monroeville 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed. 2d. 267 (1972).....13

United States Constitution

Fourteenth Amendment 4

California Constitution

Article 6, section 1 4,18,23

Article 6, section 9 4,18,24

Article 6, section 12 5,13

Article 6, section 14 5,10

Article 6, section 16 5,18

United States Statutes

27 USCA s. 1257(3).....4

California Business and Professions Code

Section 6002.....9

Section 6079.1.....5,9

Section 6079.5.....5,9

Section 6086.5.....5,9.18

Section 6065.65.....5,9

Section 6086.10.....5,17

Section 6086.13.....5,9

Sectin 6094.1 9

Section 6106.....19

Section 6140.5.....5

Section 6211.....5,33

American Bar Association Model Rules of Professional Conduct

Rule 8.4.....21

California Rules of Professional Conduct

Former Rule 5-101 .....5,27.

Former Rule 8-101(A).....6,30,32

Former Rule 8-101(B)(4).....6,30,32

California Rules of Court

Rule 955.....24

Rule 977 11

Books and Articles

(1 Witkin Cal. Procedure (2d. Ed. 1970) at p. 205-20

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

LILLIAN BROWN JOHNSON

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioner Attorney respectfully prays that a writ of certiorari issue to review the judgment of the California Supreme Court, docket no. S046247, entered on August 10, 1995. Appendix A.

Said Judgment denies a Petition for Disqualification of the California Supreme Court and a Petition for a Writ of Review of a recommendation of suspension of the attorney's license to practice law for two years and indefinitely made by the California

Supreme Court's appointees to the prosecuting party, the State Bar of California. Said judgment suspends the attorney's license until she demonstrates rehabilitation and fitness to practice law as determined by the prosecuting party with a five year stayed suspension and probation, as recommended by the California Supreme Court's appointees to the State Bar of California. Appendix A.

"App" hereinafter refers to exhibits contained in the Appendix.

The Petition for Disqualification was filed to request the California Supreme Court assign a State Court of Appeals, as permitted constitutionally, to hear and determine the Petition requesting review of a recommended decision of its appointees to the State Bar of California. App. D. The Petition for a Writ of Review of the recommended decision questions whether the California Supreme Court may create a private court with a private party to license the state's attorneys and award monies for its appointees' employer by denying review of takings of licenses by its appointees to a State Bar, whether the partisan role and the

financial interest of adjudicators and prosecutors employed by that private party deny an attorney due process of law, whether publication of a recommendation of State Bar employees as a court decision in the state-wide press by the State Bar inflamed and prejudiced the judicial proceedings and denied due process to the attorney, whether the business transaction, moral turpitude, and trust account rules sweep unnecessarily into a substantial amount of protected first amendment activity, and are a denial of due process for vagueness as applied, and whether a license taking of in excess of two years and indefinitely may occur without any evidence and based on charges never filed or heard. App. D.

I.

ORDERS BELOW

The summary order of the California Supreme Court denying the Petition for Disqualification and Petition for a Writ of Review and entering an order of suspension of the Petitioner for two years and until rehabilitation by the State Bar with a five year stayed suspension and probation is reproduced at the

appendix at A.

II.

JURISDICTION

The jurisdiction of this Court is involved under 27 U.S.C.A. s. 1257(3). This Petition for writ of certiorari is timely filed within ninety days of the order of the Supreme Court of California on August 10, 1995. Appendix A.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment XIV: "No State shall .... deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California Constitution

Article 6, section 1: "The judicial power of the State is vested in the California Supreme Court, the Courts of Appeal, the Superior Courts, and the Municipal Courts. All courts are courts of record."

Article 6, section 9: "The State Bar of California is a public

corporation...."

Article 6, section 12: (a) "The California Supreme Court may... transfer a cause from itself to a court of appeal...The court to which the cause is transferred has jurisdiction."

Article 6, section 14: "The legislature shall provide for the prompt publication of such opinions of the Supreme Court and Courts of Appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person. Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated."

Article 6, section 16: "(a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor.....(b) Judges of other courts shall be elected in their counties or districts at general elections."

The state statutes at issue are California Business and Professions Code sections 6079.1, 6079.5, 6086.5, 6086.10, 6086.65(a), 6106, 6140.5, and 6211. The former California Rules of Professional Conduct Rules at issue are 5-101 and 8-

101(A)(2) and (B)(4). They are set forth at Appendix B.

IV.

STATEMENT OF THE CASE

The California Supreme Court created with the State Bar of California, pursuant to statute, a private, partisan, financially interested State Bar Court to license the state's attorneys. The State Constitution bars court creation by government. It reserves court creation exclusively to the registered voters. The Petitioner is a registered voter and an attorney at law for over twenty years. She is a black woman attorney for over twenty years. She is a registered voter. She has no prior record of any discipline.

Compelled attorney members of the State Bar are excluded from participation in the private court. They are reduced to being the class of the accuseds. The prosecutors, investigators, and judges are employees of the State Bar. They award their mutual private employer monies for their salaries and benefits and funds for other programs of their employer, such as its Client Security Fund, by finding each accused attorney guilty of professional misconduct, taking or impairing each license to

practice law, imposing the funds they want for themselves, proceeding without evidence or notice, denying all issues of all accuseds, changing the statutes or rules on an *ad hoc* basis and on whim, and publishing in the State-wide press their recommendations as official Court decisions with those of the United States Supreme Court, Ninth Circuit Court of Appeals, and State Courts when the State Constitution has ordered that no decisions except those of the State Supreme Court and State Court of Appeals may be published in the State.

Approximately 4,125 attorneys' licenses have been taken in less than five years at a net financial benefit to the State Bar of in excess of fifteen million dollars from the takings. Older attorneys are forced out or disbarred. This opens up new slots for more attorney admittees who will pay many thousands of dollars for admission and pay whatever the State Bar wants for many years. The churning of attorney admissions and discipline is a profitable private business. Refer footnote 1.

Petitioner had a loan transaction with her sister-in-law. She enjoyed a close relationship with her sister-in-law for over

thirty eight years. App. C:29. The loan was from the proceeds of an insurance settlement Petitioner obtained for her sister-in-law. The loan was for $19,860.00. It was evidenced by a written promissory note and loan agreement. It provided for ten per cent interest. Payments were interest only for five years. Full payment of principal was to be made in five years. There was no dispute the sister-in-law signed the loan documents giving the loan to the Petitioner prior to the settlement being received and that the loan documents were authentic. The sister-in-law never objected to the loan or any of its terms. She subsequently died and was unavailable to testify. App. E:2, ft.1, E:6-E-7.

"Section[s]" refers to sections of the California Business and Professions Code. "Rule[s]" refers to the California Rules of Professional Conduct.

Three State Bar of California's employees, two attorneys and a lay person, in its "State Bar Court" recommended a two year open-ended suspension of the Petitioner's license to practice law and until rehabilitation with a five year stayed suspension [1] on

---

1 The State Bar of California hires, pays, and employs the

a claim that the attorney's a) "procurement of the loan and retention of the balance of the settlement funds constituted acts of moral turpitude and dishonesty." App. E:20, b) the loan was an improper business transaction, App. E:16-19, and c) the deposit, after payment of the sister-in-law's share of the insurance settlement and the making of the loan, into a personal account was a prohibited deposit. App.E:25.

There was no evidence presented in support of these findings.[2] The Notice of the proceedings did not contain any of these charges, claims, or allegations. App. F. These new charges were made up without notice after the fact and first appeared in

---

prosecutors, investigators, and the judges in its State Bar Court system as its employees. Refer California Business and Professions Code sections 6094.1, 6079.1, 6079.5, 6086.5, 6086.65. It awards itself money for its salaries and benefits and to funds its other programs by finding guilt of each accused. Sections 6086.10, 6086.13. On information and belief, the assessment on the Petitioner will be approximately $10,000 for a trial.

2

The findings were based on the hearsay of the daughter of the deceased sister-in-law. She was asked whether her mother had told her about the receipt of monies from the Respondent, to which she responded,"No." The State Bar has exempted itself from the state law requirements applying the rules of evidence in its proceedings. Section 6002.

the State Bar's press publication of its recommendation as a State Bar Court decision throughout the entire state. App. E.

The State Bar employees, who call themselves "Judges to a State Bar Court," are paid out of the private revenues of the State Bar, including the sums they assess upon finding each accused guilty. Refer footnote 1. They published state-wide in the press their claimed "decision" as a claimed "State Bar Court" finding the Petitioner culpable. App. E. The State Bar is prohibited by the California Constitution and the Rules of Court from publishing any decisions and may only make recommendations without publication. [3] They cited themselves

---

3 The State Bar has had an exclusive contract with the Los Angeles Daily Journal Corporation which owns all but two legal newspapers in the State. Article 6, section 14 of the California Constitution prohibits the publication of any legal decisions except those of the State Court of Appeals and State Supreme Court. The State Bar got the Los Angeles Daily Journal Corporation to publish its recommendations as court decisions in its Appellate Reports with those published of the United States Supreme Court, the Ninth Circuit Court of Appeals, the State Supreme Court, and the State Court of Appeals. App. E. As such, while the State Bar's role is advisory constitutionally, it publishes its recommendations as final court decisions as if it were a Court of law and labels them Court decisions. The California Constitution ordered the State Bar to be a public corporation, but it has held itself out to fifty million state citizens

as the law, when they are prohibited from issuing decisions or citing themselves. [4]

Following the publication, Petitioner filed her Petition for Disqualification and Petition for Review with the California Supreme Court requesting a hearing on the recommendation and her constitutional issues. App. C and D. As with all cases since it appointed employees to the State Bar to license the State's attorneys in 1989, the California Supreme Court summarily denied the Petitions. No reasons were stated. It awarded monies payable to its appointees' employer. App. A-1-2. That sum will be in excess of $10,000 for a brief trial. This is in addition to the $20,000 ordered paid to the State Bar's Client

---

with its published decisions as a Court of law for over four years when it is constitutionally prohibited from issuing decisions or being a Court. Article 6, sections 1, 9 and 14, Ca. Constitution, App. B.

[4]

California Rules of Court, Rules 977 states, [Unpublished opinions] An opinion that is not ordered published [by the California Supreme Court] shall not be cited or relied on by a court or a party in any other action or proceeding... (with exceptions not applicable)."

Security Fund if the loan is not paid to the Estate of the deceased sister-in-law. App. A-1.

V.

REASONS FOR GRANTING THE WRIT

A. The Partisan Role of the California Supreme Court for the Prosecuting Party by it Appointing Employees to it and Awarding Money to their Appointees' Employer by Denying Hearing to Each Accused Poses Due Process Problems

Based on this Court's statement that the test is whether the situation offers a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the State and the accused, **Aetna Life Insurance Company v. La Voie** 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988), is not a situation where a State Supreme Court appoints employees to a prosecuting party to be its "judges," whose recommendations it then reviews, when the party employing its appointees is privately financed, and where by denying all petitions of all accuseds, it orders monies paid as "costs" to reimburse the party for the salaries and benefits of not

only its appointees to a party, but for their co-employees as well, and orders monies for its appointees' employer's private fund of in excess of $20,000 for its appointees to give out to the Public, such a situation of temptation to not hold the balance nice, clear, and true, that recusal of the California State Supreme Court Justices was and is required under the due process clause?[5]

B. Administrative Adjudicators Selected, Hired, and Employed by a Party Which is the Exclusive Financial Beneficiary of Findings Against Accuseds Poses Due Process Problems

Pursuant to this Court's holding in **Ward v. Village of Monroeville** 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d.267 (1972), State Supreme Court review of an adjudicatory proceeding in a lower level which lacked a fair and impartial adjudicator denies to a party fundamental due process of law. A party has a constitutional right to a fair and impartial adjudicator in the first instance, *de novo* review being irrelevant. Proceedings conducted by members of a Board of a State Bar Association wherein they

---

[5] There is no Rule of Necessity. The California Constitution provides any case may be transferred by the California Supreme Court to a State Court of Appeals. Article 6, section 12, Ca. Constitution.

desired to recoup the Association's investigative costs by finding guilt of accuseds and imposing those costs upon the adjudged guilty attorneys were voided for lack of due process of law. **Matter of Ross** 656 P. 2d. 832, 838, 99 Nev.1 (Nev. 1983).

Is not the fact that the hearing and review judges are selected, hired, and employed by the prosecuting party, the State Bar of California, and retain their judgeships, which amount to approximately $150,000 each annually, only if they adjudge attorneys guilty and obtain monies from their guilty adjudications for the State Bar, such a role of partisanship for a party and financial beneficiary, that due process is violated by reason of a lack of a fair and impartial adjudicator in the California State Bar licensing system?

Of note is that the attorney was ordered to repay monies in excess of the loan amount (over $20,550) to the State Bar's Client Security Fund if the sums were not paid to the estate of Margie Brown within two years. This way the State Bar and the California Supreme Court's appointees may give out the $20,550 to anyone they please in the Public and aggrandize their public

image and the success of its Client Security Fund. The State Bar finds guilt to get the money for itself. Section 6086.13 authorizes the State Bar to order $5,000 a violation, or up to a maximum of $50,000, for its Client Security Fund payable from each attorney it finds guilty. App. B-4. This is in addition to the collection of its employee judges, prosecutors, investigators' and staff's salaries and benefits on a time-expended basis, which in this case, will exceed an additional $10,000 since the attorney insisted on her innocence and went to trial. App. A-2, B-3.

C. Privately Financed Prosecutors who Obtain Funds for their Privately financed Employer by Prosecuting Accuseds Poses Due Process Problems

Pursuant to this Court's holding in **Berger v. United States** 295 U.S. 78, 88, 55 S. Ct. 629, 79 L. ed. 2d. 1314 (1935), "Private attorneys appointed to prosecute a criminal contempt action represent the United States, not the party that is the beneficiary of the court order allegedly violated.....A prosecutor may be tempted to bring a tenuously supported prosecution if such a course promises financial or legal rewards for the private client....Prosecution by someone with conflicting

loyalties `calls into question the objectivity of those charged with bringing a defendant to judgement... appointment of an interested prosecutor creates an appearance of impropriety that diminishes faith in the fairness of the criminal justice system in general. ..If a prosecutor uses the expansive prosecutorial powers to gather information for private purposes, the prosecution function has been seriously abused even if, in the process, sufficient evidence is obtained to convict a defendant."

In **Shaw v. Garrison** 467 F. 2d. 113 (Fifth Cir. 1972), cert. denied, a public prosecutor had obtained funds from friends and others to prosecute an alleged co-conspirator in the murder of President John F. Kennedy. After acquittal of the defendant on the murder charges, the prosecutor commenced a perjury prosecution against the defendant. He was enjoined from prosecuting the defendant by the federal court. A citizen has the right to be prosecuted only in good faith. A prosecutor who prosecutes to obtain funds to reimburse associates for funds advanced and to benefit a book deal he has is prosecuting a citizen in bad faith. His cloak of public duty is conflicted with

private interest.

The State Bar prosecutors and their examiners prosecute to obtain monies to benefit their private employer so as to aggrandize their positions with their employer. If they do not prosecute, they do not get the monies. If they do not get the monies, they are fired. Their loyalty is owed, not to the Public's interest in prosecuting attorneys for professional misconduct, but in selectively prosecuting solo private practitioners, preferably minority attorneys, over non-existent wrongs or *de minimis* wrongs. These yield fast cash for their private employer.

The fact that the Notice to Show Cause admittedly had no evidence to support it, that none of the noticed charges were sustained, that all of the charges were added after the trial without notice or trial, indicates the State Bar prosecutes with no hope of obtaining valid convictions, but solely to harass attorneys into paying its private employer the monies it wants for itself. Refer sections 6086.10(b), 6086.13, App. B-3, B-4.

When the State Bar is the exclusive financial beneficiary of each prosecution and the State and the taxpayers receive no

monies from these prosecutions, are these not bad faith prosecutions for financial gain and benefit that violate due process of law?

D. The Admitted Unconstitutionality of the State Bar's Court for Depriving the Petitioner of Her Right to Vote Compels Voiding of the Judgment Based on Proceedings Conducted Therein

It is undisputed that the California voters abolished all authority in State Government to create new courts in 1966. The voters reserved court creation to themselves by constitutional amendment. Article 6, section 1, California Constitution. The statute passed in 1986 permitting the State Bar to create a State Bar Court is well-recognized to be unconstitutional. The legislature has had no authority to create new courts since 1966. Section 6086. 5. The California Constitution has required the State Bar to be a public corporation since 1966. Article 6, section 9, California Constitution. Judges to State Courts must be elected by the voters. Article 6, section 16, California Constitution. The Governor fills interim vacancies. Article 6, section 16, California Constitution. The statutes and rules of the California Supreme Court authorizing it to appoint judges to a

State Bar Court which bar public election of these judges divests the Petitioner of her rights to the equal protection of state law which provides she votes to create the state courts, the Governor fills interim vacancies in judgeships, and the Petitioner elects all judges thereto.

Similar to **Kramer v. Union Free School District No. 15**, 395 U.S. 621, 627 (1969), is not the "fencing out" of the franchise constitutionally guaranteed to the Petitioner as a registered voter a denial of equal protection of the law, such that the proceedings conducted by an admittedly unconstitutional private court and unconstitutional private judges must be declared void, requiring that the judgment based on proceedings in this unconstitutional private court must be vacated for just cause?

E. The Moral Turpitude Ethics Statute Sweeps Unnecessarily Broadly and Has no Limiting Construction Posing Overbreadth and Vagueness Due Process Problems

Section 6106, first approved in 1872 and never revised or

limited,[6] states, "The commission of any act of moral turpitude, dishonesty, or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension." The peril to protected first amended activity derives from the fact that the terms "moral turpitude, dishonesty, or corruption" have "no settled usage or tradition of interpretation in [the] law." **Gentile v. v. State Bar of Nevada** 501 U.S. 1030, 115 L. Ed. 2d. 888, 111 S. Ct. 2720 (1991), at 2731.

On February 6, 1992 the American Bar Association voted

---

6 In explaining why the California Supreme Court has declined to limit the definition of moral turpitude, dishonesty, or corruption, it stated," `The definitions of `act involving moral turpitude' are frequent and repetitious. The simplest is that act contrary to honesty and good morals is conduct involving moral turpitude.' **Stanford v. State Bar** (1940) 15 Cal. 2d. 721 , 727 [107 P. 2d. 635]. (1 Witkin Cal. Procedure (2d. Ed. 1970) at p. 205.) This broad definition is intended to give the State Bar and this court broad discretion in determining what acts will be deemed to involve moral turpitude and in applying the statutory provisions concerned with such acts." (Id.) **Kitsis v. State Bar** 23 Cal. 3d. 857, at 865; 153 Cal. Rptr. 836, 592 P.2d. 323 (1979).

to disapprove the California attorney licensing system. The California ethics rules are A.B.A.-rejected. The American Bar Association ordered "moral turpitude" deleted from the Model Rules of Professional Responsibility approximately twenty seven years ago. The A.B.A. comments state, "the Model Rules also eliminate the troublesome `moral turpitude' standard... This standard has been broadly defined as `an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man'... That the standard was manifestly ambiguous is evidenced by the wide ranging interpretations given it by the courts." A.B.A. Annotated Model Rules, Rule 8.4 Misconduct, Comment, at 353.

The State Bar employees claim that the moral turpitude is that, "Respondent's procurement of the loan and retention of the balance of the settlement funds constituted acts of moral turpitude and dishonesty." App. E:19. Petitioner entered into a lawful written loan with her sister-in law. Her loan was not an act of moral turpitude. It was not a *malum in se* nor a *malum*

prohibitum. The sweep of protected activity quashed, suppressed, and punished, without advance notice to an attorney, by an elasticized and ever expanding "moral turpitude" standard applied *ad hoc* to accommodate the State Bar's financial interests in proceedings poses due process problems indicating the statute is unconstitutional for both overbreadth and vagueness, as applied.

F. The Publication by the Prosecuting Party of Its Recommendations as a Court Decision Prior to Court Access and Finality of its Recommendations Poses Due Process Problems of Fraud and Prejudicial And Inflammatory Pre-Judgment

The State Bar, exempt from state law under section 6002, but prohibited constitutionally from publishing its findings as decisions or citing itself as precedent, none-the-less has done so for four years in *ex parte* collaboration with the State Supreme Court which wants it to assume its licensing function for it and has no interest in enforcing constitutional prohibitions on its appointees to the State Bar. Article 6, sections 9, 14, California Constitution. App. E. Refer pages 10-11, fts. 3 and 4.

The publication of the State Bar employees'

recommendation as a decision in the state-wide press as that of a Court of Law is prefaced with inflammatory, prejudicial, and inaccurate statements. It panders to the Public's desire to have lawyers called epithets. The degradation of the legal profession by the State Bar for its own financial profit is a goal it pursues while it conceals from the Public its financial profiteering from such humiliation inflicted on the State's lawyers.

The State Bar's published "decision," which is not a decision, but is solely a recommendation, starts in big letters with, ***"Counsel's Overreaching at Expense of Sister-in-law with Poor Health and Low Income Justifies Suspension."*** The palming off of a an advisory act, as if it were a final decision, when no decision had been issued, and no court access permitted yet, is part of the deception the State Bar has perpetrated.

The published decision states it is issuing from the "Review Department of The State Bar Court." App. E:1. There is no State Bar Court. The California Constitution permits only a State Supreme Court, Court of Appeals, Superior Courts, Municipal Courts, and Justice Courts. Article 6, section 1,

California Constitution. The State Bar is limited constitutionally to being and holding itself out as a public corporation, but its recommendations are published as those of a State Bar Court, when no such entity is permitted to exist within the State and when it is admitted such a State Bar Court is an unconstitutional entity. Article 6, section 9, California Constitution.

The conclusion of the published decision indicates this claimed State Bar Court is entering the order of suspension, when the State Bar has no constitutional authority, as a public corporation, to enter orders of any kind. [7]

The recommendation commences with, "This case involves an attorney who exploited a vulnerable, impecunious relative by improperly borrowing and not repaying the bulk of the proceeds of a personal injury settlement obtained by the attorney

---

7 The conclusion of the published State Bar decision states, "We adopt the remainder of the hearing judge's discipline recommendation, as modified, including the requirements that respondent pass the California Professional Responsibility Examination prior to the expiration of her actual suspension; that she comply with the provisions of Rule 955, California Rules of Court, and that she pay costs as ordered by the California Supreme Court." Perlman, P.J. We concur. Norian, J. Stovitz, J.

on her behalf..... We agree that two years of actual suspension and restitution constitute fitting discipline for respondent's overreaching at the expense of her sister-in-law, now deceased, a woman of limited income, in poor health, who lacked sophistication in business matters." App. E:1.

The offense here is obtaining a loan from a close relative. The loan was in writing. It was signed by the relative. It provided for ten per cent interest and full payment in five years. The Petitioner was unable to repay the sums in full, but made payments on the amount due. There is no ethics rule that says a good loan becomes a bad loan because of the mental, emotional or physical status of the lender. There is no ethics rule that defines "overreaching" or makes "overreaching" a sanctionable offense, yet the two year open-ended suspension is based solely on a claim to that which was not charged, is not an offense, and has no definition, to wit, a claim of " overreaching."

This Court has held in **Sheppard v. Maxwell** 384 U.S. 333, 86 S. Ct. 1507 that publicity surrounding a trial may be so inflammatory, prejudicial, histrionic, and unfair that it denies an

accused the right to a fair trial. This publication, illegal and unconstitutional, misleading, deceptive, subjective, and inflammatory, pandering to the Public, indicative of the race stereotyping and hatred the State Bar foments within the State, admits there was no due process in the proceedings. This publication causes not only the Public, clients, lawyers, and judges to prejudge the accused's guilt but it renders the actual rendering of an independent decision by the State Supreme Court a non-existent right. This published recommendation forces a prejudgment of the accused's guilt, especially since it is published as a state-wide Court decision prior to any access to a court.

Does not the inflammatory publication deny to the Petitioner her rights to fundamental due process of law and to untainted proceedings within a court of law prior to a taking of her license to practice law?

///

G. Is not a Business Transaction Rule which requires the Transaction be Fair and Reasonable to the Client, That the Terms in Writing Should be Reasonably Understood by the Client, and that a Client be Advised he May Seek the Advice of anIndependent Lawyer, Unconstitutional as applied to a claim the State Bar Would have made a Different Loan, the Attorney had to make sure each Term was Fully Known and Understood, the Client was in Poor Health and Unsophisticated, and the Attorney had to Tell Client to Go to an Independent Attorney?

The State Bar employees took a rule which admittedly was not violated and made up *ad hoc* its own new rules of strict liability. App. B-7, E-16-E-19.

Former rule 5-101 required that a client with whom an attorney enters into a business transaction be "given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transaction." App. B-7. The State Bar employees' decision claims the guilt is that the attorney "was obligated to go beyond informing Ms. Brown that she had a right to consult another attorney and was required to advise her to do so." App. E-19.

Former rule 5-101 concerning business transactions between attorney and client provided that the terms of the

transaction must be transmitted in writing to the client in "manner and terms which should have been reasonably understood by the client." App. B-7. The decision of the State Bar employees claims the guilt is that attorney is "obligated to insure that the terms and conditions of the loan were fully known and understood" by the client. App. E-18

Former rule 5-101 concerning business transactions between attorney and client provided that the terms must be " fair and reasonable to the client." App. B-7. The decision of the State Bar employees' claims the attorney's guilt is that the State Bar employees would have made the loan a secured loan and that the client's "poor health, frequent use of alcohol, lack of sophistication in business matters, and limited education" made the loan not fair and reasonable to her. App. E-1, E-18. This is the typical stereotype of the poor black boozing moron the State Bar encourages in the State as it libels the dead. This was a woman who knew the attorney as her sister-in-law for over thirty eight years. There was no evidence she used alcohol in entering into the loan. There was no evidence of unfair or unreasonable

to the client. The question of fair and reasonable to the client has to be based on an objective analysis of the client's viewpoint.

The loan was in simple language, reasonably understood by anyone, evidenced by a promissory note and a loan agreement. It was fair and reasonable from the client's viewpoint as she never objected to it while she was alive and willingly signed it. With a thirty eight year relationship between Petitioner and her sister-in-law, there were many profound close ties and debts of gratitude over those thirty eight years that goes into an objective view of whether the loan was fair and reasonable to the client. But the subjective, and financially inspired, views of the State Bar clearly exceed a reasonable interpretation of the language of the rule. What it would have done is not the guilt that may be imposed. What the rule actually required must be the basis of guilt, not speculation, surmise, racial stereotyping, conjecture, and pandering by those who are financially inspired.

As held in **Big Mama Rag Inc. v. United States** 631 F.2d. 1030 (D.C. 1980) at p. 1037, "statutes phrased in terms of individual sensitivities are suspect and susceptible to attack on

vagueness grounds...." See **Kramer v. Price** 712 F. 2d. 174, 177 (Fifth Cir. 1983). When a taking or denial of a license is "comprised [of] purely subjective evaluations of wholly unrestricted factors,..." **Big Mama Rag** at 1123, thereby imposing an unconstitutional standard where a license is necessary for the exercise of a right or privilege, it has been held to be unenforceable for unconstitutionality.

Does it not deny due process for private employees of a prosecuting party to take the facial language of a rule, ignore it, make up new rules on their own after the fact and by way of a finding of guilt, as such sweeps unnecessarily broadly into areas of protected conduct without advance notice, is applied to a substantial amount of protected conduct, and is fundamentally unfair?

H. The fact The Loan was Made before the Settlement Received and the Attorney Paid the Client's Funds Out of her own Funds before Receipt indicates NoTrust Account Violation Occurred and the Rule is Unconstitutional for Financial Interest and Overbreadth

Former rule 8-101(A) provided that "All funds received or held for the benefit of clients by a member... shall be deposited

in one or more identifiable bank accounts labelled (sic) "Trust Account... Former rule 8-101(B)(4) provided that "A member of the State Bar shall ...promptly pay or deliver to the client as requested by the client the funds, securities, or other properties in the possession of the member of the State Bar which the client is entitled to receive."

The Notice alleged these violations were based on misappropriation of funds and of non-payment to a doctor for a lien. App. F. However, orally at hearing this Notice and the charges were dismissed. New and unidentified oral charges were made instead. The State Bar's decision recommending suspension claims that "Respondent contends that she did not violate former rule 8-101(A) in that all funds had changed character from trust funds into personal funds prior to her receipt thereof. ... Nevertheless, since there was a mixed character to the funds, respondent was obligated to place the settlement proceeds into her trust account and thereafter dispense the $700.00 owed to her client promptly. There is no doubt that Ms. Brown made a demand for funds. Respondent's failure to place the settlement

proceeds in a trust account and to pay the remainder promptly to Ms. Brown violated the trust account rules." App. E-25.

There was no evidence of a violation of former rule 8-101(B)(4). There was no evidence of a demand for the funds by Ms. Brown. She was deceased and there was no record of any demand and she had already executed the loan documents. It is not evidence to claim,"There is no doubt that Ms. Brown made a demand for funds," when such conjectures and surmise are made up solely to find guilt in order to obtain money from the accused for the judge's salary and benefits and for his co-employees.

Former rule 8-101(A) required deposit of a client's funds in a trust account. However, the loan had already been executed and the attorney had already paid Ms. Brown her share of the settlement from her own funds, so that the settlement funds, when received, no longer had a mixed character. They were personal funds of the attorney by way of loan and payment of legal fees. Since the State Bar confiscates the interest monies on all monies in all trust accounts for itself, its finding of guilt was

not based on a violation of the rule, but on its desire to force lawyers to put all monies they receive into a trust account where the State Bar may monthly confiscate all the interest monies for itself. Section 6211.

When an entity has a financial interest, not only in the outcome of an adjudication of guilt, but in enforcement of a specific rule from which it also financially benefits, does not this disqualify the entity deciding its own financial interest issues, and is not this application unconstitutional for lack of due process of law?

I. The Taking of Licenses based on Charges Never Filed or Heard Denies Due Process of Law

It is undisputed that the Notice served on the attorney contained charges that were not proven. App. F. Instead, the State Bar employee made up new ones orally, and the decision rests exclusively on charges never filed. App. E. Pursuant to this Court's decision in **In re: Ruffalo** 390 U.S. 544, 88 S. Ct. 1222, 20 L.Ed.2d. 117 (1968), is this not a denial of due process of law?

//

CONCLUSION

A state system of attorney licensing that operates on layers of undisclosed private, partisan, and financial interests within private prosecutors, investigators, and judges does not provide confidence to the Public that lawyers are properly licensed.

The Petition should be entertained to address issues concerning due process requirements concerning fair and impartial adjudicators within a State Supreme Court and administrative adjudicators, financial interests within private prosecutors, the unconstitutionality of a private, for profit Court owned and run by a private prosecuting party, publication of an inflammatory and prejudicial nature of a recommendation of a party's employees as a claimed Court decision prior to court access, facial overbreadth and vagueness of "moral turpitude," the business transaction rule, and trust deposit and payment rules for lack of fair notice, and whether this system with thousands of attorney takings based on charges never filed and an over fifteen million dollar profit to a State Bar from the takings shall continue

infects and contaminates the legal system of the State [8].

RESPECTFULLY SUBMITTED,

Dated: September 5, 1995

LILLIAN BROWN JOHNSON
Petitioner Attorney *Pro Se*

---

[8] To prevent the federal court declaring its licensing system unconstitutional, the State Bar hired sitting Ninth CircuitCourt of Appeals' Judge Arthur Alarcon to author and publish State-wide a report called "The Alarcon Report," in support of its private, for profit State Bar Court. As a result, the Ninth Circuit has refused to hear or decide any cases concerning the constitutional issues. This suggests that all a party has to do in the State of California is hire a federal Circuit Court judge.

Verification

I have read the foregoing Petition for Writ of Certiorari to the Supreme Court of the State of California and state it is made on my own personal knowledge, information, and belief, and this verification is executed this 5th day of September, 1995 at Los Angeles, California.

RESPECTFULLY SUBMITTED,

Dated: September 5, 1995

LILLIAN B. JOHNSON
Petitioner Attorney *Pro Se*